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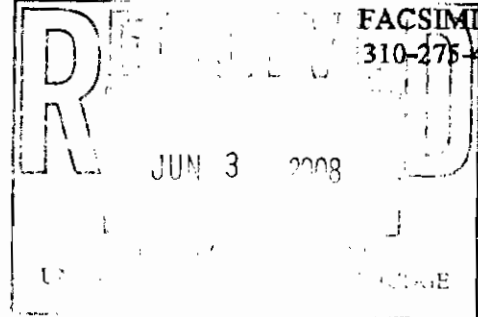
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June 3, 2008

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**VIA FACSIMILE: 212-805-7928**

Honorable Michael H. Dolinger  
United States Magistrate Judge  
500 Pearl Street, Room 2270  
New York, New York 10007



Re: Ahava.002/Signature Bank v. Ahava Food Corp. et. al. 08 Civ. 3893 (NRB)(MHD)

Your Honor:

As you recall, I represent defendant Ahava of California LLC ("Ahava CA") in the above referenced case. I write about a few "time of the essence" issues, which require immediate adjudication. I also respond to David Feuerstein's ("DF") June 3, 2008 letter.

**Time of the Essence Request for Relief Re: Bank's Non-Cooperation re: Impairment Claim**

This Court ordered plaintiff Signature Bank's ("the Bank") to serve me no later than tomorrow with documents supporting any "impairment" claim (and to make best efforts to serve me with the documents earlier). Today, I spoke with DF to inquire. He was unable to tell me how I would be served, when I would be served, and how many documents existed. He was even unable to identify the actual alleged impairment. Further, my recollection is that when your honor made the discovery schedule, the "impairment" witnesses being contemplated by the Bank at that time related to alleged impairment of physical collateral, i.e. equipment at the two upstate NY dairy manufacturing plants which Ahava CA is renting. This Court later ordered that the Bank provide me with documents by May 30, 2008 re: impairment of physical collateral or the Bank waived the issue. The Bank never provided me with any documents and the issue is waived. Yesterday, the Bank represented to you and me in a conference call for the first time that it planned to produce Robert Bloch ("Bloch") re: the issue of impairment of non-physical collateral (even though I don't recall this issue even being part of the moving papers). Today, when I spoke with DF, the story changed again: a man named Gibbons **might** be produced and Bloch **might** be produced. DF told me he did not know what was going on re: documents or witnesses. This puts me in an awkward position because I must line up a court reporter, and coordinate telephonic depositions which are taking place at the Kornstein Veisz firm in NYC. Again, I am telephonically taking the depositions. At this point, it is very apparent that the Bank is not cooperating as it should be doing. Request is made that the Bank be barred from producing any evidence of impairment. In the alternative, request is made that unless I receive the documents by June 4, 2008, 9:00 am, the Bank should be barred from raising this issue. Similarly, request is made that unless I receive the names of the deponents by close of business today, the Bank be barred from raising this issue.

ENDORSED ORDER

As previously directed, plaintiff is to provide to defendant's counsel any documents pertaining to any alleged financial impairment today (June 4). This is to be done by no later than 5 p.m. New York time, and is to include personal delivery to counsel, whether by fax, email or otherwise.  
M/RSR 6/4/08

**VIA FACSIMILE: 212-805-7928**

Honorable Michael H. Dolinger

June 2, 2008

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**Response to 6/3/08 DF Letter**

DF's letter re: deposition correction is incomplete. It also puts words in my mouth. Here are the facts which DF's letter omits. As of this time, we do not have any transcript from the court reporter re: yesterday's deposition, and I have no estimate from the Bank when it would be arriving. On June 4, 2008, from 7:00 am to probably around 2:00 pm, Faraborz Banayan ("FB") is being deposed. On June 5, 2008, I am probably in deposition all day re: the impairment witnesses, unless of course my above requested relief is granted. On June 6, 2008, in the morning, we have a hearing in the Ahava CA/Signature Bank California lawsuit. June 7, 2008 is the Sabbath. June 8, 2008 in the evening starts the very holy holiday of Shavous, which requires preparation. June 9 and 10, 2008 is Shavous. On June 11, 2008, we have two depositions noticed in this case. On June 12, 2008, Bloch is being deposed. On June 13, 2008, two other bank witnesses are being deposed. June 14, 2008 is the Sabbath. Since the Bank has placed FB's company, i.e. Ahava CA at risk, FB intends to attend these depositions. From 1:00 am to 7:00 am, FB is running his business. Once again, the Bank's failing to consider anyone's needs but its own, and has created a problem which it is forcing upon everyone else.

Robert Freidbauer ("RF") should not be ordered deposed for multiple reasons. First, your honor made the discovery schedule, your honor very clearly and repeatedly asked all sides what discovery it wanted. Based upon this, we crafted a discovery schedule. The Bank chose not to depose RF. **At all times, the Bank has known about RF. The Bank should be required to live by its representations to the court** and counsel. Second, there is no time to take and/or prepare for the deposition. See the above discussed timetable.

I am available all day today to speak with the court.

Very truly yours,

  
Robert W. Hirsh

cc: David Feuerstein, via fax: 212-545-3477

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